

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
Purchasing Unit
425 W. Ottawa
Lansing, Michigan 48933

CONTRACT NO. 591B6600379

Between
THE DEPARTMENT OF TRANSPORTATION
And

NAME & ADDRESS OF VENDOR Miller Concrete & Construction 6870 W. Kelly Rd. Lake City, MI 49651 Email: Caseymiller33@yahoo.com	TELEPHONE (231) 510-5093 Contact: Casey Miller						
Lift Bridge Operational & Custodial Services							
<table style="width: 100%;"><tr><td style="width: 33%;">Contract Period: Fort Street Bridge:</td><td style="width: 33%;">From: August 1, 2016</td><td style="width: 33%;">To: July 31, 2018</td></tr><tr><td>Contract Period: Bicentennial Bridge and Blossomland Bridge</td><td>From: March 1, 2017</td><td>To: February 28, 2019</td></tr></table>		Contract Period: Fort Street Bridge:	From: August 1, 2016	To: July 31, 2018	Contract Period: Bicentennial Bridge and Blossomland Bridge	From: March 1, 2017	To: February 28, 2019
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Contract Period: Bicentennial Bridge and Blossomland Bridge	From: March 1, 2017	To: February 28, 2019					
TERMS <div style="text-align: center;">Net 45 days</div>	<div style="text-align: center;">2, 1 Year Options</div>						
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract, including any applicable information from the vendor's proposal to RFP-059116B0007924 dated 5/10/2016 are attached. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Est. Contract Value: \$1,448,257.20							

FOR THE VENDOR:

Miller Concrete & Construction

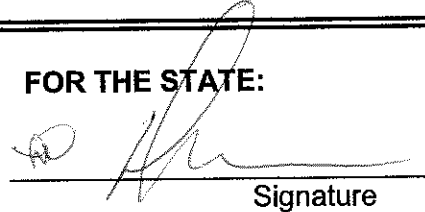
Firm Name


Authorized Agent Signature
CASEY MILLER

Authorized Agent (Print or Type)
07/21/2016

Date

FOR THE STATE:



Signature
Demetrius A. Parker, P.E.

Name
Administrator, Michigan Department of Transportation

Title
7-27-16

Date



STATE OF MICHIGAN

EXHIBIT A – STATEMENT OF WORK CONTRACT ACTIVITIES

Contract Number 591B6600379

Lift Bridge Operational & Custodial Services

BACKGROUND

The work specified in this Contract consists of providing contract services for operations and custodial services for moveable lift bridges owned by the State of Michigan (the State), Michigan Department of Transportation (MDOT). The Contractor will be required to provide custodial services and operate these bridges as necessary and as required by law. The drawbridge operations must comply with the United States Coast Guard Code of Federal Regulations, Title 33 Navigation and Navigable Waters, part 117 Drawbridge Operation Regulations (**33CFR117**)

Link to 33CFR117 below:

<http://www.ecfr.gov/cgi-bin/textidx?SID=7607d1d9b1eb0e4c9a4535999813f968&mc=true&node=pt33.1.117&rgn=div5>

SCOPE

The Contractor must provide all personnel, equipment, tools, materials, supervision, and other items and services necessary to perform the contract activities described in this Contract, including, but not limited to:

- a) Opening and closing operations as required by law
- b) Perform visual inspections of all electrical, mechanical and hydraulic equipment at the start of each shift (at all towers)
- c) Furnish all supplies and labor required for routine custodial duties (at all towers)
- d) Appoint a Program Manager who has the responsibility of handling all contract related issues and obligations and whose duties shall include, but not be limited to, the preparation and submittal of billings to MDOT; assurance that all required insurance remain in effect and that the Contractor has sufficient personnel and supplies to perform the bridge operating activities; the oversight of the bridge operations on the job site, the assignment of operators to work shifts, the summarizing of daily activities in the log book and the notification to the MDOT Program manager or his/her representative if any mechanical or electrical abnormalities occur.
- e) Establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract, and said records to be hereinafter referred to as the "records". Separate accounts must be established and maintained for all costs incurred under the Contract.
- f) Maintain the records for at least three years from the date of final payment made by MDOT under the Contract. In the event of a dispute with regard to the allowable expenses or any other issue under the Contract, the Contractor must thereafter continue to maintain the records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
- g) Permit MDOT, or its representative, to inspect, copy, or audit the records at any reasonable time after giving reasonable notice. The Contractor will provide final accounting, which MDOT may audit. Any audit will be for information only and will not affect the lump sum payments made under the Contract.

- h) Perform all custodial duties as outlined in Attachment A-III

In the event of contract termination, within two (2) weeks of termination, MDOT must receive all daily work logs, records and any other documentation produced by the Contractor under the Contract prior to the Contractor being reimbursed.

NOTE: Subcontracting is permitted providing Prime Contractor will perform no less than 50% of the original Contract amount.

The initial three bridges are listed below along with specifics of each bridge. However, this contract may be amended to include additional bascule bridges throughout the State. Should operations of additional bridges be required the Contractor will receive a 6 week advance notice and be given bridge operational manuals and any special instructions for the specific additional bridges. All amendments to the contract are subject to State Administrative Board approval.

M-85 over the Rouge River, or the Fort Street Bascule Bridge

The Fort St. bascule bridge is owned by MDOT and is located in the City of Detroit, Wayne County and crosses the Rouge River. The bascule bridge is currently under construction and is being operated by the construction contractor. In previous years the bridge was operated by Wayne County under a maintenance contract with MDOT.

- The Contractor must begin its mobilization activities and services upon execution of a contract and be ready to begin Contract Activities by the estimated start date of August 1, 2016. Contractor will be given a 3 week advance notice prior to starting.
- Opening and closing operations as required by law; 24 hours per day, 7 days a week and 365 days of the year as mandated by the United States Coast Guard 33CFR117.
- Provide trained personnel to operate the bridge 24 hours a day, 7 days a week and 365 days a year. The Contractor must be responsible to schedule all regular and back-up personnel for all work shifts, as determined by the Contractor and in accordance with United States Coast Guard regulations.

M-63 over the St. Joseph River, or the Blossomland Bridge

The Blossomland rolling-lift bascule bridge is owned by MDOT and is located in the City of St. Joseph, Berrien County and crosses the St. Joseph River. The bascule bridge was built in 1949 and is currently operated by MDOT-hired operators.

- The Contractor must begin its mobilization activities and services upon execution of a contract and begin Contract Activities by March, 1, 2017.
- Opening and closing operations as required by law; 24 hours per day, 7 days a week, from March 15 to December 15 of each year as mandated by the United States Coast Guard 33CFR117. Arrangements may also need to be made for occasional navigational transportation during the months of December, January and February.
- Provide trained personnel to operate the bridge 24 hours a day, 7 days a week, from March 15 to December 15 of each year. The Contractor must be responsible to schedule all regular and back-up personnel for all work shifts, as determined by the Contractor and in accordance with United States Coast Guard regulations.

I-94 Business Loop over the St. Joseph River, or the Bicentennial Bridge

The Bicentennial moveable bridge is owned by MDOT and is located in the City of St. Joseph, Berrien County and crosses the St. Joseph River. The bascule bridge was built in 1949 and is currently operated by MDOT hired operators.

- The Contractor must begin its mobilization activities and services upon execution of a contract and begin Contract Activities by March, 1, 2017.

- Opening and closing operations as required by law; 24 hours per day, 7 days a week, from March 15 to December 15 of each year as mandated by the United States Coast Guard 33CFR117. Arrangements may also need to be made for occasional navigational transportation during the months of December, January and February.
- Provide trained personnel to operate the bridge 24 hours a day, 7 days a week, from March 15 to December 15 of each year. The Contractor must be responsible to schedule all regular and back-up personnel for all work shifts, as determined by the Contractor and in accordance with United States Coast Guard regulations.

REQUIREMENTS

1. General Requirements

Only materials conforming to the requirements of the attached approved materials list (Attachment A-I) shall be used in the work. MDOT Program Manager or a designated representative can reject any material not up to specifications. It will be the Contractor's responsibility to remove and replace all rejected materials. Said rejected material will be taken off the bridge property at once and not used on this project. Costs for removing and replacing rejected materials will be at the Contractor's expense.

1.1. Reserved

1.2. Training

The training of bridge operators shall be accomplished through a training program mutually developed by MDOT and the Contractor.

- a.) The Contractor will be required to comply with all provisions of the "Bridge Operator Qualifications" (Attachment A-V) as adopted by MDOT. The training program should include minimum operating procedures for the bridge, and contain information on Coast Guard Regulations, MDOT and Coast Guard authority, and emergency procedures.
- b.) The Contractor must have competent personnel trained as bridge operators in accordance with the Contract. MDOT will train the Contractor's Program Manager in the operations of the bridges.
- c.) The Contractor will be responsible for all training of the Bridge Operator Candidates (Minimum of 8 hours Classroom training and additional on-site training on the bridges to be operated). Training shall include but not be limited to: normal operational procedures, emergency operational procedures, communications procedures for telephone and marine radio, form preparation, and contact procedures. The on-site training will be conducted between 10:00 PM and 6:00 AM. Openings of the bridges for training purposes will be coordinated to minimize traffic disruption. The Contractor will be responsible for the classroom testing, grading and verification of all other requirements. All training will be conducted by the Contractor's personnel. All classroom and on-site training and materials may be monitored by MDOT. The Contractor's training personnel will be responsible for training and performance testing of all bridge operators. MDOT reserves the right to verify the competency of any Contractor's personnel at any time.
- d.) The Contractor must be responsible for implementing the final written and operational tests. Final written and operational tests must not be given to any bridge operator candidate unless and until the Contractor has certified in writing to MDOT that the Candidate has received all training that is required by the Contract.
- e.) The Contractor must provide documentation and training materials.

1.3. Reserved

2. Acceptance

2.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities:

- a) Weekly inspection of all shifts must be conducted by the Contractor's Program Manager using the "Contractor/ Operator's Inspection" form (provided in Attachment-II) to insure continued compliance

with this specification. This form is to be signed, dated as to day and time, and submitted to the MDOT Program Manager at the first of each month.

- b) MDOT may make inspections at various times, and shifts, using the "Contractor's Operations Inspection" form. The Contractor must immediately resolve any and all discrepancies. Failure to resolve noted discrepancies within five calendar days will result in a determination of non-conformance and assessment of liquidated damages as detailed in Section 7.

2.2. Reserved

3. -3.1 Staffing

- a) The Contractor must assure that all bridge operators employed are trained consistent with Section 1.2. Training. All such employees must have sufficient skill and experience to properly perform the work assigned to them, or the MDOT Program Manager may take action as prescribed below.
- b) The Contractor must at all times be responsible for the conduct and discipline of its employees. Whenever the MDOT Program Manager shall determine that any person employed by the Contractor is not performing consistent with the contract requirements such person must, upon notice to the Contractor, be removed from the Contract and must not be re-employed on the Contract without written consent of the MDOT Program Manager. Should the Contractor fail to remove such persons, the MDOT Program Manager may withhold all payments, which are or may become due until such determinations are complied with.
- c) The Contractor must respond in writing within ten days to the MDOT Program Manager answering any complaints filed by the public, the Coast Guard, or MDOT concerning the conduct of employees or operation of the bridges.
- d) The Contractor must comply with the United States Department of Labor Standards Act. Employees working under the Contract must be considered as non-exempt workers and covered by minimum wage, overtime, record-keeping and child labor standards as established by this act. The Contractor must compensate its employees a minimum hourly rate equal to or greater than the current Federal minimum wage.
- e) The Contractor must establish drug and alcohol program procedures as outlines in Attachment A-IV.
- f.) The Contractor needs to assure that the personnel hired is able to perform duties as outlined in Attachment A-III, Custodial Duties of Bridge Operators, and insure the personnel hired is be able to follow procedures outlined in "General Bridge Operating Manual" (Attachment A-VI), "Specific Bridge Operating Manual" (Attachment A-VII, A-VII-Bicentennial, or A-VII-Blossomland) and "Instruction for Traffic Control Gate Malfunctions" (Attachment A-VIII, and also found in Attachment A-VII Bicentennial and A-VII-Blossomland).

3.2. Customer Service Telephone Number

The Contractor Representative must be available for calls 24 hours a day, 7 days a week and 365 days a year.

The Contractor, Casey Miller is the Contractor Representative.
Mobile Number: (231) 884-5211.

3.3. Reserved

3.4. Work Hours

The Contractor must provide Contract Activities 24 hours a day, 7 days a week and 365 days for the Fort St. Bridge. For the Bicentennial and Blossomland Bridges Contract Activities must be provided 24 hours a day, 7 days a week from March 15 to December 15 each year.

3.5. Key Personnel

Individuals who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within 2 hours.

At least one of Contractor's Key Personnel must be on-site at the Fort St Bascul Bridge 24 hours a day, 7 days a week and 365 days a year.

At least one of Contractor's Key Personnel must be on-site at the Blossomland or Bicentennial Bridge 24 hours a day, 7 days a week from March 15 to December 15 each year.

The Contractor must notify the MDOT Program Manager at least 14 calendar days before removing or assigning a new Contractor Representative.

Contractors Program Manager must have complete authority over the bridge operators and will be responsible for their removal, discipline, schedule etc. He/she or a designated representative will be the contact person for the Contractor in case of problems, disputes, etc.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Program Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 10-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be **\$10,000** per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least **10** calendar days before the Key Personnel's removal.

(ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least **10** calendar days, in addition to the **\$10,000.00** credit specified above, Contractor will credit the State **\$500.00** per calendar day for each day of the 10 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to **\$10,000** maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 10 calendar days of shadowing will not exceed **\$25,000** per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract

The Contractor's Key Personnel are as follows:

Miller concrete will provide the proper personnel at Ft Bascule Bridge 24 hours a day, 7 days a week, 365 days a year. The Ft Bascule Bridge "Key Personnel" will include: one Program Manager and three Bridge Operators. At the Blossomland and Bicentennial bridges there will be "Key Personnel" of one Program Manager, and three Bridge Operators 24 hours a day 7 days a week from March 15 to December 15 each year. We will guarantee that all "Key Personnel" will be assigned to the State account, be properly trained, aware of all contractual requirements and will be able to respond to all State inquiries within two hours. As the contract states, Miller Concrete will disclose any "Key Personnel" changes 14 calendar days prior to making any changes of assignment or removal. Our Program Manager will be responsible for all Bridge Operators and the managerial duties that fit the job description of being a Program Manager.

Miller Concrete realizes that any changes to the assigned roles stated in our response could fall under the "Unauthorized Removal" if we have not received written consent from the State in regards to completing those changes, and could be considered a possible breach in contract. We are also aware that making such changes without previous written consent from the State would result in failure to complete this contract in its time sensitive entirety, which would result in loss or damage to the State with monetary credits due. Those credit amounts due would reflect what Miller Concrete failed to follow through with that has been listed above under (i) and (ii). We acknowledge and agree to each Unauthorized Removal Credit.

3.6. Organizational Chart

The Contractor provided an overall organizational chart that details staff members, by name and title, and subcontractors with their bid response.

3.7. Disclosure of Subcontractors

None

3.8. Security

Contractor must maintain a secure environment while servicing the facility. The Contractor must comply with all security regulations and special working conditions as required by MDOT:

- a) No one is allowed into the facility other than those individuals responsible for performing services.
- b) In locations that include a security alarm system, Contractor must also properly set the security alarm when leaving (if applicable).
- c) Failure to maintain a secure environment and set the security alarm (where applicable) will result in issuance of a complaint and possible cancellation of the Contract.
- d) Any cost incurred from a security service or local police for false alarms caused by failure of the Contractor to properly set the security alarm will be the responsibility of the Contractor.
- e) The MDOT Program Manager may require the Contractor to immediately remove any employee(s) from the agency's premises for just cause. The Contractor will assume any and all responsibilities relating to this removal.
- f) The MDOT Program Manager must make final determination of a Contractor's employee's suitability for assignment to a specific location. Problems of this nature will be addressed with the Contractor's management.
- g) Contractor personnel must be dressed in MDOT approved shirts with collars and sleeves, long pants, and safety shoes when on MDOT property. Shirts must include the Contractor's name or logo and the employee's name must be printed or stitched on the shirt or a patch. All shirts must be one standard color.
- h) Issue a photo identification card to all Contractor personnel, which must be worn on MDOT property. This card must include the individual's photo, name, job title and company's name and must be approved by the MDOT Program Manager.

4. Project Management

4.1. Project Plan

The Contractor will carry out this project under the direction and control of the specified Program Manager. Within 14 calendar days of the Effective Date, the Contractor must submit a project plan to the MDOT Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, and resources required.

A project work plan for managing implementation of the services must be specified and submitted to the MDOT Program Manager for review and approval.

Project management plan must identify methods, tools and processes proposed to oversee the project, address issues and changes as may arise, and keep the appropriate parties apprised of progress.

Contractor's Work Plan, which must be approved prior to commencement of work, must include the following:

- a) Material List (Attachment A-I) - indicating description, age, manufacturer, model and serial number of each piece. Materials must meet or exceed all requirements defined in Attachment A-I. All materials must be in the Contractor's possession, available for use and fully operational, prior to Contract award.
- b) Schedule Of Operations - personnel expected to complete work on the Contract.
- c) Name(s) of supervisors – 24-hour contact telephone numbers and best contact times.
- d) Proof of Insurance as defined in the Standard Terms and Conditions must be provided to State of Michigan prior to Contract award.
- e) Any misrepresentation by the Contractor of its ability to perform the work described in this Contract will be grounds for immediate termination. In such case, the Contract will be awarded to the next qualified bidder who can demonstrate the ability to perform the work.

4.2. Meetings

Contractor must meet with the MDOT Program Manager and other department project-leads, on a basis to be established by Program Manager and the Contractor, but must meet quarterly, at a minimum, for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise, and to continuously communicate with the agency/departmental project-lead.

The Contractor must attend the following meetings:

- a) Pre-Proposal Meeting
- b) Kick Off Meeting

The State may request other meetings, as it deems appropriate.

4.2.1. Annual Service Review and Progress Meeting

- a) The Program Manager may request an audit of the services provided each year under the specifications, terms, and conditions of the Contract.
- b) An unsatisfactory audit may result in cancellation of the Contract under the terms of the Cancellation Clause in the Contract. Further, should the Contract be cancelled for cause, the Contractor so cancelled will not be allowed to participate in request(s) for continuation of this service.
- c) The audit will consist of an evaluation of the total service quality, including responsiveness, timeliness of required reporting, and any other specifics as required under the terms of the

Contract. The results of the audit along with Contract recommendations will be published by Purchasing Operations and distributed to the respective Agency(s).

- d) Should the Contractor desire, a meeting will be arranged between all concerned parties within 10 calendar days of the date the Contractor received, or could have reasonably been expected to receive, his/her copy of the audit. This meeting will provide an opportunity for the Contractor to present his/her reactions to audit recommendations, including but not limited to:
- I. Timely and accurate submission of invoices
 - II. Implementation and adherence to contractor's safety plan
 - III. Quality of safety and operations training
 - IV. Emergency response, and MDOT/US Coast Guard/ County/City notification procedures
 - V. Timeliness of adjustments based on MDOT/ County/City comments
 - VI. Coordination with MDOT/ County/City maintenance activities
 - VII. Maintaining clean facilities

4.3. Reporting

The Contractor must submit, to the Program Manager, the following written reports (Provided in Attachment A-II):

- a) Bridge Operator's Report
- b) Unnecessary Bridge Openings
- c) Contractor/Operator's Inspection
- d) Equipment Check List
- e) Accident Incident Report

The above listed reports are desired on a monthly basis. The Contractor must explain its reporting capabilities and any reporting that is included in its proposal. The reports can either be hand written or typed (preferred). The reports need to be electronically sent to the MDOT Program Manager.

5. Ordering

5.1. Authorizing Document

The appropriate authorizing document for the Contract will be a State Issued Purchase Order which must be approved by the MDOT Program Manager to order any deliverables under the Contract.

6. Invoice and Payment

6.1. Invoice Requirements

All invoices submitted to the State for the Fort St Bascule Bridge must be sent via e-mail to MDOT-Taylor-Invoices@michigan.gov.

All invoices submitted to the State for the Blossomland Bridge and Bicentennial Bridge must include the purchase order number and be sent to Caroline Watson at watsonc6@michigan.gov.

The invoices must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; and (f) total price. Overtime, holiday pay, and travel expenses will not be paid.

All invoices should reflect actual work done on a monthly basis.

6.2. Payment Methods

The State will make payment for Contract Activities via Electronic Funds Transfer (EFT).

As required by MCL 18.1283, the Contractor must electronically register with the State at www.michigan.gov/cpexpress to receive EFT payments.

6.3. Procedure

6.3.1. Work and Deliverables

Contractor must provide Deliverables/Services and staff, a detailed work plan, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- a) Operate the bridge using certified bridge operators. (Certified means documented training and testing provided by the Contractor Program Manager)
- b) Post the Acknowledgment Forms
- c) Provide MDOT Program Manager with complete bridge operator's competency certification form
- d) Provide proper supervisory personnel
- e) Update and provide to the MDOT Program Manager all bridge opening logs
- f) Inform the MDOT Program Manager of mechanical/electrical malfunction and/or failure to correct malfunction.
- g) Inform the MDOT Program Manager of malfunctioning navigation lights
- h) Inform the MDOT Program Manager of events that may have jeopardized bridge structural integrity, such as hits from vehicular traffic, vessel collision, etc.
- i) Inform the MDOT Program Manager any time bridge operation is limited or stopped
- j) Contractor Program Manager or a designee respond within 15 minutes to any telephone call made to the Contractor by MDOT
- k) Contractor Program Manager or a designee respond in person within 30 minutes when requested
- l) Advise the MDOT Program Manager when the Contractor Program Manager serves as a bridge operator
- m) Inform the MDOT Program Manager of any complaints from citizens or public agencies
- n) Notify the U.S. Coast Guard and the MDOT Program Manager within thirty 30 minutes of any restriction to waterborne traffic
- o) Update and provide to the MDOT Program Manager all forms as required by MDOT and the U.S. Coast Guard
- p) Resolve discrepancies noted on the Contractor's Operations Inspection Form within five calendar days
- q) Perform **VISUAL** inspections of all electrical, mechanical, and hydraulic equipment at the start of each shift. Contractor must inform MDOT of any irregularities found immediately upon the completion of the inspection.
- r) Provide signs identifying the Contractor as the operator of the bridges. These signs will be affixed to the door of the bridge houses.

- s) Cost for attire, identification cards and providing and affixing the signs must be included in the unit price for mobilization.

6.3.2. Control of the Work

- a) Authority of the MDOT Program Manager: All work must be done to the satisfaction of MDOT Program Manager or designated representative who may elect to inspect/observe any work done by the Contractor.
- b) Contractor Supervision: The Contractor must provide a Program Manager or a designee, who will be available locally, 24 hours a day, seven days a week, 365 days a year for the Fort Street Bascule Bridge and during navigational season for the Blossomland and Bicentennial Bridges, for immediate contact for the purpose of supervising, training, scheduling and coordinating the Contract with the MDOT Program Manager. This employee will be MDOT'S contact person for day-to-day operations and emergency situations. The Contractor Program Manager may serve as a bridge operator. The Contractor is expected to return calls within 15 minutes. The MDOT Program Manager must be advised at all times as to identification and means of contacting the Program Manager. The Contractor's Program Manager or his/her designee must have the authority to take immediate action to correct conditions determined by MDOT to be unsafe or not in compliance with the Contract.
- c) MDOT reserves the right to temporarily and/or partially staff the bascule bridge with state employees in lieu of contracted employees. At least 28 days' notice will be given to the Contractor before replacement of contract employees. Any cost adjustments to the Contract would be addressed when notice is given for use of state employees.

6.3.3. Miscellaneous

- a.) At the beginning of the Contract the Contractor must inventory the bridge for all the equipment on the "Monthly Equipment Check List" form and sign the form as receiving the equipment. At the first of each month the Contractor must survey this equipment and fill out this form, sign it and submit it to the MDOT Program Manager's office. The Contractor is to replace any missing or damaged equipment at their cost. If such discrepancies are not resolved within five calendar days and MDOT has to correct the deficient items, the Contractor will be billed for the entire cost incurred by MDOT to correct such items. A determination of non-conformance and assessment of liquidated damages will be added to MDOT'S cost as stated in the General Bridge Operating Contract Specifications.
- b.) The Contractor must establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under the Contract. Separate accounts must be established and maintained for all costs incurred under the Contract.
- c.) The Contractor must also establish and maintain bridge operator's reports, unnecessary bridge openings, contractor's/operator's inspection logs, equipment checklists, and accident incident reports.
- d.) The Contractor must furnish all supplies required for routine custodial duties including but not limited to changing light bulbs, (including those for the control house, gates and navigational system), toilet paper, brooms, mops, buckets, hoses, towels, cleaning solutions, hand soap, trash cans, trash can liners, de-icing chemical for sidewalks, snow shovels, window squeegees and extensions, etc. A power washer with hose for washing catwalks and railings should be a minimum 1 ½ hp, 1000 psi operating pressure, 2 gal/min 120 volt.
- e.) Forms: MDOT has attached copies of all needed forms (Attachment A-II) as part of this Contract. The Contractor will be responsible for supplying all other copies needed during the length of the Contract. Completed forms must be legible.

- f.) Utilities: MDOT will pay utility charges required for the operation of the bridge.
- g.) Preservation of Property: The Contractor must take reasonable effort to protect MDOT property from damage. Negligence by the Contractor may require payment to correct these damages.
- h.) Employee Safety: The Contractor must have a safety program in compliance with all safety policies/regulations/standards and practices of Michigan Occupational Safety and Health Administration (MIOSHA). The Contractor must provide all employees, the appropriate personal protective equipment to safely accomplish each task assigned. At a minimum the Contractor must provide safety equipment needed at various locations on the bridge sites that includes: life preservers, safety vests, hard hats, safety shoes, safety glasses, latex gloves for cleaning, 6 foot step ladder.

7. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages.

When the State determines that the Contractor has failed to conform to the terms of the Contract, as set forth in this contract, after the third written warning an assessment of liquidated damages may be made by the State against the Contractor. Sums assessed as liquidated damages shall not be considered penalties, but as damages due the State from the Contractor for failure to complete the work as contractually required. It is agreed that because of the potential damage to the public and because actual damages would be virtually incapable of determination, both as to amount and existence, at the time of the breach, liquidated damages shall be assessed according to the following:

- a. **Abandonment of Bridge**

In the event the bridge is left unattended (*unattended means not on the bridge site*) by a bridge operator or if the MDOT Program Manager or representative finds it necessary to remove a bridge operator due to his inability to perform the duties listed in the Contract as determined by the MDOT Program Manager, the Contractor must replace the bridge operator within one hour. After the third incident, an assessment shall be made of \$200.00 per hour for each continuous whole hour the bridge is left unattended.

For purposes of this section, if the bridge is left unattended, the MDOT Program Manager shall assume that the bridge operator abandoned the bridge at the time of the last entry in the bridge opening log unless other compelling evidence can be presented to show otherwise.

- b. **Other Cases of Non-Conformance**

All other cases of non-conformance may result in an assessment of up to \$200.00 per occurrence after the third written warning as determined by the MDOT Program Manager, until conformance is achieved.

STATE OF MICHIGAN

EXHIBIT C – PRICING

Contract Number: 591B6600379

Lift Bridge Operational and Custodial Services

1. The Contractor must submit monthly billings on the Contractor's letterhead for a lump sum payment for the services performed during the prior month billing period. The monthly billing period is defined to be from the sixteenth day of a month to the fifteenth day of the following month. In the event that the date of execution of the Contract falls within a billing period, the Contractor will be reimbursed on a prorated basis for the billing period assuming a 30 day billing period.
2. The Contractor will also be paid a mobilization fee each year at the beginning of the contract year.
 - a. Mobilization is defined as a summary of all costs for annual start-up including, but not limited to, training, relocation expenses (if applicable), purchase of custodial supplies, equipment, safety equipment, clothing, materials, insurance, office overhead, and supplies, etc.
3. Prices quoted are firm for the entire length of the Contract.

FORT ST BRIDGE

Description	Year 1	Year 2
Bridge Operation (labor costs)	\$20,137.62 Per Billing Period (12 per year)	\$20,137.62 Per Billing Period (12 per year)
Mobilization (supplies)	\$40,000.00 Lump Sum (1 per year)	\$40,000.00 Lump Sum (1 per year)
Total Cost	\$281,651.44	\$281,651.44

BLOSSOMLAND & BICENTENNIAL BRIDGES

Description	Year 1	Year 2
Blossomland Bridge Operation (labor costs)	\$20,137.62 Per Billing Period (9 per year)	\$20,137.62 Per Billing Period (9 per year)
Blossomland Mobilization (supplies)	\$40,000.00 Lump Sum (1 per year)	\$40,000.00 Lump Sum (1 per year)
Blossomland Total Cost	\$221,238.58	\$221,238.58
Bicentennial Bridge Operation (labor costs)	\$20,137.62 Per Billing Period (9 per year)	\$20,137.62 Per Billing Period (9 per year)
Bicentennial Mobilization (supplies)	\$40,000.00 Lump Sum (1 per year)	\$40,000.00 Lump Sum (1 per year)
Bicentennial Total Cost	\$221,238.58	\$221,238.58

ATTACHMENT A-I
APPROVED MATERIALS LIST

MATERIAL	USE	SPECIFICATION
Toilet Paper		Toilet tissue rolls, 2 ply wrapped 4½" x 4½", 1000 sheets/roll, 96 rolls/case
Liquid Hand soap		Soap must be mild, liquid and remain viscous at temperatures of 40 degrees F. or higher.
Plastic Bag Barrel and Bag Liners		33 gallon capacity, minimum liner size, 33x40, .43 mil. thickness
Sanitary Napkin Disposal Bag	Sanitary Napkin Receptacles	Approved dispenser liner that fits properly
Glass Cleaner	All glass and mirrored surfaces	Liquid spray formula designed for cleaning glass surfaces and mirrors, non-abrasive
Toilet Bowl Cleaner	To clean inside of bowls and flushing cavities	E.P.A. approved 9% HCl acid base bowl cleaner
Liquid Synthetic Detergent	To clean tiles, floor, walls, partitions, sink tops, sinks, outside of toilets, toilet seats and sanitary napkin containers	E.P.A. registered disinfectant, detergents shall be quaternary ammonium compounds
Stainless Steel Cleaner	To clean metal surfaces	Safe for metals non-scouring product
De-icing Chemical	Use on sidewalks near entrances	Calcium Chloride or product approved by the Contract Administrator
Latex Gloves	Shall be used when cleaning	
Quality Cotton Mops	Mop tile floors	Cotton blend, banded loop
Mop Handle	Hold mop	Plastic grip or speed change heads
Mop Bucket & Wringer	Hold solution and drain mop	Bucket must be on rollers, wringer must match bucket and mop size
Brooms	Sweep dirt and debris from floor and catwalks	Heavy duty natural corn broom and heavy duty (stiff bristles) push broom
Window Squeegees & Extensions	To clean windows	Squeegee designed for window washing with extension as needed

MATERIAL	USE	SPECIFICATION
Toilet Bowl Mop	To clean inside toilet bowl	Cotton or synthetic mop - no bristles
Spray Bottles	Hold various cleaning supplies	Clean plastic, trigger style bottles
Sponges and cloths	Clean surfaces	Cotton cloths and absorbent sponges
Hose	Wash catwalks and railings	Quality rubber hose with proper fittings
Step Ladder	General housekeeping	OSHA approved, 6 foot fiberglass mechanic ladder
Light Bulbs		Varies by location
Toilet Plunger		
Navigational Lights		100 watt, 120v rough service, incandescent
Hand Towels		2 ply tri-fold paper hand towels
Power Washer	Wash catwalks and railings	Minimum 1½hp, 1000psi operating pressure, 2 gal./min. 120 volt

ATTACHMENT A-II
FORMS

1. BRIDGE OPERATOR'S REPORT (Form 0406)
2. UNNECESSARY BRIDGE OPENINGS
3. CONTRACTOR/OPERATOR'S INSPECTION
4. EQUIPMENT CHECK LIST
5. ACCIDENT INCIDENT

UNNECESSARY BRIDGE OPENINGS

BRIDGE NAME: _____ BRIDGE No. _____

BRIDGE LOCATION: _____

- NUMBER OF VESSEL (IF NUMBERED): _____
- NAME OF VESSEL: _____
- HOME PORT (IF SHOWN): _____
- NAME & ADDRESS OF OWNER: _____

MONTH: _____ DAY: _____ YEAR: _____ TIME: _____ AM: _____ PM: _____

DIRECTION OF PASSAGE: UP STREAM: _____ DOWN STREAM: _____

CAUSE OF UNNECESSARY BRIDGE OPENING

APPURTENANCES UNESSENTIAL TO NAVIGATION:

ANTENNA: _____ OUTRIGGER: _____ DECORATIVE MAST: _____

FLAGPOLE: _____ FALSE STACK: _____ CANVAS TOP: _____

OTHER: _____

CLEARANCE GAUGE: _____ FEET

ESTIMATED CLEARANCE OF VESSEL'S HIGHEST FIXED POINT: _____ FEET

REMARKS: _____

BRIDGE OPERATOR: _____

(VIOLATION CANNOT PROCEED WITHOUT THIS INFORMATION)

CONTRACTOR/OPERATOR'S INSPECTION

BRIDGE NAME: _____

INSPECTOR: _____ TIME: _____ DATE: _____

EVALUATION	GOOD	FAIR	POOR
A. Bridge Operators Overall Knowledge Of Functions			
1. Knowledge of routine operations procedures			
2. Knowledge of emergency operating procedures			
3. Knowledge of administrative requirements			
4. Knowledge of Coast Guard Regulations			
B. Bridge Operators Overall Operational Ability			
1. Ability to operate bridge			
2. Bridge logs (Completeness)			
C. Bridge Navigation And Safety Conditions			
1. Navigation lights (daily checks)			
2. Fender systems			
3. Other safety devices			
D. Bridge Operators Appearance			
E. Housekeeping Overall			
1. Operators bridge house floors			
2. Bridge house windows			
3. Control console and switchgear			
4. Walkways and platforms			
5. Commode			
F. Overall Bridge Condition			

EQUIPMENT CHECK LIST

BRIDGE NAME: _____

1. FIRST-AID KIT – (2 required)
 - a. In a readily accessible place?
 - b. Has it been used?
 - c. Has it been replenished?

2. LIFE JACKETS – (2 required) and LIFE RINGS – (2 required)
 - a. Is the required number accounted for?
 - b. Ripped, torn, or cracked?
 - c. General Condition: New_____ Good_____ Fair_____ Poor_____

3. ROPE, 150 linear feet 1/4 inch (plus vertical distance of the draw span to water)
 - a. Is it in a readily accessible condition?
 - b. General Condition: New_____ Good_____ Fair_____ Poor_____

4. FIRE EXTINGUISHERS (6 required)
 - a. Are there 4 ABC, 10 lbs.?
 - b. Are there 2 BC, 10 lbs.?
 - c. Date filled?
 - d. Has the pin been broken?

5. BIG RED FLAG FOR EMERGENCY SHIP WARNING
 - a. Is the required number accounted for?
 - b. Are they properly stored?

6. FLASHLIGHTS – (2 required)
 - a. Is the required number accounted for?
 - b. Are they in working condition?
 - c. Are the batteries good?

7. ARE THE FOLLOWING AVAILABLE?
 - a. Cones – (6 required)
 - b. Vests (Reflectorized) – (2 required)

8. ARE THE FOLLOWING WORKING SATISFACTORILY?

- a. Commode
- b. Fan/air conditioner
- c. Door locks
- d. Telephone
- e. Intercom (if available)

9. COMMENTS:

PROJECT MANAGER

DATE

ACCIDENT INCIDENT

LOCATION: _____

TIME OF ACCIDENT: _____ DATE: _____ HOUR: _____ AM: _____ PM: _____

WEATHER CONDITIONS: _____ (CLEAR, RAIN, FOG, ETC.)

OPERATOR'S NAME, ADDRESS & PHONE NUMBER	VEHICLE / BOAT IDENTIFICATION NUMBER	DRIVERS LICENSE NUMBER	INSURANCE COMPANY

MDOT PROPERTY DAMAGED: _____

DESCRIPTION OF ACCIDENT: _____

POLICE AGENCY REPORT NUMBER: _____

SKETCH IF NECESSARY

ATTACHMENT A-III
CUSTODIAL DUTIES OF BRIDGE OPERATORS

1. All windows in the bridge houses must be kept clean, the view of vessels must be clear
2. Sweep all floors throughout the bridge house daily
3. Wet mop all floors throughout the bridge house three times a week or more often as needed
4. Wax all floors throughout the bridge house monthly
5. Sweep all stairwells throughout the bridge house three times a week or more often as needed
6. Wet mop all stairwells throughout the bridge house three times a week or more often as needed
7. Remove spider webs, cobwebs and other debris throughout the bridge house daily
8. Each operator shall empty wastebaskets throughout the bridge house after working his/her shift
9. Each operator shall remove any newspapers and magazines from the bridge house after working his/her shift
10. The contents throughout the bridge house should be dusted daily
11. The bathroom toilet and sink shall be cleaned and scoured daily
12. Check water level of counterbalance pits daily, and pump them if there is any water accumulation (ONLY for Blossomland and Bicentennial Bridges)
13. Clean walkways, horizontal tread plates and surrounding areas weekly or more often if needed
14. Power wash walkways, catwalks, and piers underneath the bridge deck monthly or more often if needed
15. Remove any debris on the bascule span
16. Remove snow from sidewalks of bascule span, around bridge house, and far side entrance doors
17. Change burned out light bulbs throughout the bridge house, motor rooms, catwalks, and navigation lights
18. The control panel is to be kept clean and orderly at all times
19. Nothing should ever be stored in the machinery room

ATTACHMENT A-IV

DRUG AND ALCOHOL TESTING

The Omnibus Transportation Testing Act was signed into law on October 28, 1991. The Secretary of Transportation subsequently published Regulations for alcohol and controlled substance testing of persons in the transportation industry who **perform safety sensitive functions** as described by the Act.

Since MDOT considers this as a safety sensitive function, the Contractor shall establish a drug and alcohol program for his/her employees that includes the following types of drug and alcohol testing:

1. Pre-Employment
2. Random
3. Reasonable Suspicion
4. Post-Accident
5. Return to Duty/Follow-Up

Any employee who tests positive shall be immediately suspended and/or dismissed. No employee will be allowed to return to work without the approval of the Contract Administrator.

The contractor will not be reimbursed for any drug or alcohol testing. Pre-Employment testing shall be considered included in the item for Mobilization. All other testing shall be considered included in the item: "Bridge Operation, In Season".

ATTACHMENT A-V

BRIDGE OPERATOR QUALIFICATIONS

A. PURPOSE AND SCOPE

- a. The purpose and scope of this attachment is to set forth standards for employment of persons who operate the bascule bridge. These standards are established to protect the public safety, and promote efficiency in land and water transportation.

B. QUALIFICATIONS FOR EMPLOYMENT AS A BRIDGE OPERATOR

- a. Physical Requirements:
 - i. Corrected vision 20/40 or better.
 - ii. Be able to distinguish red, yellow and green colors.
 - iii. Must be able to hear frequencies from 500 to 6,000 Hertz + 15 Db and the overall hearing sensitivity must be able to resolve no less than - 50 Db in a normal situations. A voice communication test will be used for screening. A hearing test shall be required when the screening test is failed.
 - iv. Must be able to climb bridge stairs and ladders (on-site test).
 - v. Must be drug free (in accordance with Federal Drug Free Work Place Act of 1988, PL 100-690).
 - vi. Must be capable of hand cranking bridge gates (on-site test).
 - vii. Must be capable of carrying and placing traffic control devices (approximately thirty (30) pounds).
- b. Must have a local telephone for emergency contact.
- c. Must be at least eighteen (18) years old.

C. SKILLS, EDUCATION AND ABILITY

- a. Must be able to read and comprehend MDOT and United States Coast Guard manuals, rules, regulations and procedures (classroom and on-site testing).
- b. Must be able to keep logs and records in accordance with MDOT procedures in correct, legible English.
- c. Must be able to effectively communicate in English on the VHF marine radio.
- d. Must be able to follow instructions.
- e. Must be able to perform minor maintenance on structures (on-site test).
- f. Must have certification as Trained Bridge Operator. Operators working on more than one bridge must be trained on each structure. Training is valid for twenty-four (24) months for a specific bridge.

ATTACHMENT A-VI
GENERAL BRIDGE OPERATING MANUAL

- I. FORWARD
- II. NOTE TO THE BRIDGE OPERATOR
- III. JURISDICTION
- IV. BRIDGE OPENING SCHEDULES
- V. DISASTERS
- VI. SIGNALING
 - A. GENERAL
 - B. PROPER USE OF CHANNEL 16 VHF-FM
 - C. BRIDGE TO BRIDGE RADIO TELEPHONE, CHANNEL 12 OR 22 VHF-FM
 - D. IMPROPER USE OF THE RADIOTELEPHONE
 - E. SOUND SIGNALS
 - F. VISUAL SIGNALS
- VII. GENERAL INSTRUCTIONS
 - A. RESPONSIBILITY
 - B. CONDUCT
 - C. ACCIDENT REPORTS
 - D. EMERGENCIES
 - E. ENCROACHMENT
 - F. SAFETY
 - G. LIGHTING
- VIII. BRIDGE MAINTENANCE
- IX. INSTRUCTIONS AND GUIDES FOR COMPLETING FORMS
- X. MISCELLANEOUS REQUIREMENTS

I. **FORWARD**

- A. This manual has been prepared by The Department to describe the duties and responsibilities of bridge operators under contract to the Department.
- B. The procedures for bridge operations are intended to prevent damage to persons or property.

II. **NOTE TO BRIDGE OPERATOR**

- A. The Department has entrusted to your care, thousands of lives daily and valuable mechanized equipment, proper care and operation of which is of primary importance to the people using the highways and waterways of the State. It is your duty to conduct all operations of the bridge in accordance with the regulations of the United States Government and with all Local and State Statutes; to adhere to the policies and instructions as given in this manual which may be supplemented by additional instructions from the local Program Manager; to take such action as will be required to maintain safe bridge operation; and to maintain cleanliness on the bridge and in the both bridge houses; to call local police when necessary to maintain order on or near the bridge.
- B. You are to be courteous and responsible at all times. Under no circumstances are you to participate in arguments with marine traffic operations or users of the bridge. If you follow the guide and procedures of the manual and any new instructions from your supervisors, communications with the public will be minimal and you will be performing your duties to a high standard. If you find yourself, at any time while on duty, about to lose your temper in dealing with any member of the public; don't do it. No good to you, the Contractor or the Department can result. Calm yourself and deal with the public reasonably or call the local police for assistance.
- C. You are required and directed to familiarize yourself with the contents of this manual and any special regulations issued pertaining to the bridge which you operate. You are responsible for operating the bridge in strict compliance with this manual and to reference all applicable manuals (Attachment A-VII, Operating Instructions for Fort St, Bascule Bridge, Attachment A-VII-Bicentennial, and Attachment A-VII-Blossomland) and any other special instructions that you may receive from the Contractor or local Program Manager.
- D. You or another competent, careful, reliable, bridge operator as certified by the Contractor shall be on duty at all times prescribed in the contract for the purpose of operating the drawbridge.

III. **JURISDICTION**

- A. Primary jurisdiction to regulate drawbridges over the navigable water of the United States is vested in the U.S. Coast Guard. The regulations are codified in the **CODE OF FEDERAL REGULATIONS, TITLE 33 Navigation and Navigable Waters, herein after referred to as 33CFR.**

Such bridges owned by the Department have been constructed or maintained and operated by permit to the Department. All rules for the Contractor to operate the bridge shall be issued by the Department. For this purpose communication will normally be between the local Program Manager or a designee and the Contractor or a designee.

- B. If any person knowingly fails to comply with any regulation or rule issued or order given under the provisions of 33CFR, or knowingly obstructs or interferes with the exercise of any power conferred by 33CFR, he shall be punished by imprisonment for not more than ten years and may at the discretion of the court,

be fined not more than \$10,000.00. Some of the information provided in this document is from the 33CFR United States Coastal Pilot 6. The Contractor is advised to purchase the 33CFR United States Coastal Pilot 6 and any updates for each bridge and be knowledgeable of the rules and regulations contained herein. The Contractor is advised that this information is subject to change and he should train and educate his bridge operating personnel accordingly.

- C. In the event the Contractor believes a rule issued by the Department is in conflict with a rule in the 33CFR, he should immediately request a conference for clarification with the Program Manager.

IV. BRIDGE OPENING SCHEDULES

- A. All drawbridges are operated either on a schedule approved by the United States Government or on signal and must be attended at all times. Per the U.S. Coast Guard the Fort St. Bascule, the Bicentennial, and the Blossomland Bridges must be opened on signal 24 hours a day, 7 days a week. The Fort St. Bascule Bridge needs to stay operational all 365 days of the year, while the Bicentennial and Blossomland Bridges are operated during the navigational season from March 15 to December 15 of each year (see **33CFR117**). In the event the Contractor is assigned a bridge for which advanced requests for openings is required, the Program Manager will advise the Contractor of such requests and the Contractor will assure that the bridge is operated at the times requested. Notwithstanding such approved schedules or requests; when a bridge operator is informed by a reliable source that an emergency vehicle is due to cross the bridge or if he sees or hears an emergency vehicle approaching, the bridge operator shall take all reasonable measures to have the bridge closed at the time the emergency vehicle arrives at the bridge. The bridge operator shall be responsible for giving appropriate signals to any approaching vessels under these circumstances.
- B. Except as provided by particular bridge opening schedules, drawbridges shall be opened promptly and fully for the passage of vessels when a request to open has been given in accordance with signaling procedures established herein. Under no circumstances is the bridge operator to question the vessel operator as to his right for a bridge opening based on the height of the vessel. If a bridge operator is required to open a bridge for a vessel because of a nonstructural fixture on that vessel, which in his opinion, is not essential to navigation or which is easily lowered, he is to complete the Bridge Operator's Report on Unnecessary Bridge Opening and submit it to his supervisor and to the Program Manager.
- C. The Department may obtain permission from the U.S. Coast Guard to temporarily alter the schedule or obtain permission to temporarily close the bridge. When permission is obtained, the Department will inform the Contractor and the Contractor and the bridge operator are required to comply with the temporary conditions.
- D. During Civil Defense emergencies or under certain weather conditions, the Department may issue orders to the Contractor or the bridge operators to open or close the bridge contrary to the schedule. The Contractor and the bridge operators are required to comply with these emergency orders.

V. DISASTERS

- A. Federal regulations authorize drawbridges to remain closed during a natural disaster unless the Coast Guard specifically directs otherwise. The regulations do not permit closure in anticipation of a disaster without prior Coast Guard approval. Refer to **33CFR117.33**.

B. Authorities desiring to temporarily cease or restrict drawbridge openings due to the arrival of a disaster must obtain authorization from:

- Fort Street Bridge - Ninth Coast Guard District, Bridge Management Specialist Lee D. Soule via e-mail at Lee.D.Soule@uscg.mil or via phone at (216) 902-6085 during regular business hours, Monday through Friday. At all other times call the Duty Officer at Coast Guard Sector Detroit (313) 568-9524.
- Bicentennial and Blossomland Bridges - The Duty Officer may be contacted at (269) 983-6114, or the Chief at (216) 902-6085.

These contacts will relay the request and furnish a response within minutes. Temporary closures are approved on a case by case basis. Specific regulations may exist for certain bridges which require opening a signal during periods of storm warning or alerts.

C. High winds or ice or snow loads may make a drawbridge inoperable or subject it to damage. Drawbridges are authorized to remain closed while experiencing steady winds, ice, or snow loads if the Department has determined that closure is required to prevent damage to the bridge. Requests to close drawbridges to prevent damage will be considered by the Coast Guard. Such requests will be made by the Department to the Coast Guard.

VI. SIGNALING

A. General

Please refer to **33CFR117.15** for more information on Signaling.

1. The operator of each vessel requesting a drawbridge to open shall signal the bridge operator and the bridge operator shall acknowledge that signal. The vessel operator shall repeat the signal until the bridge operator has acknowledged in some manner.
2. The authorized signal devices and order of preference to be used to request an opening and to acknowledge a request shall be:
 - a. Communication by radiotelephone.
 - b. Sound signals
 - c. Visual signalsWhatever signals are used they must be sufficient to alert the person being signaled.
3. All acknowledging signals given by the bridge operators shall follow the requesting signal by no more than 30 seconds.
4. Vessel Signals for Bridge Opening Request (Communication by Radiotelephone)

B. Proper Use of Channel 16 VHF-FM

1. Channel 16 VHF-FM is designed by the Federal Communications Commission (FCC) as the National Distress, Safety and Calling frequency. It must be monitored at all times by vessels underway. Calls to other vessels are normally on Channel 16, and except in an emergency, should shift to another channel to communicate. If a vessel cannot be raised on Channel 16 for communication concerning navigational safety, an attempt can be made on Channel 12 or 22.
2. The Coast Guard has received complaints concerning the failure of vessels to answer calls from other vessels on Channel 16 VHF-FM.

Incidents of failure to respond on Channel 16 involving safety communications should be reported to the nearest Coast Guard Marine Safety Office.

3. FCC Regulations prohibit radio checks with the Coast Guard on Channel 16 VHF-FM, except when conducted by FCC representatives, qualified radio technicians installing or repairing equipment, or when requested by the Coast Guard.

C. Bridge-to-bridge radiotelephone, channel 12 or 22 VHF-FM

1. The Vessel Bridge-to-Bridge Radiotelephone Act, Public Laws 92-63, requires subject to the regulations, while navigating, to be equipped with at least one single channel transceiver capable of transmitting and receiving on Channel 12 or 22 VHF-FM. Vessels with multichannel equipment are required to have an additional receiver so as to be able to guard Channel 12 or 22 in addition to Channel 16 as required by Federal Communications Commission regulations.
2. Voice radio bridge-to-bridge communication between vessels is an effective aid in the prevention of collision where there is restricted maneuvering room and/or visibility. This channel should be monitored by small craft and recreational vessels to determine the intentions of larger vessels.
3. The use of bridge-to-bridge voice communication in no way alters the obligation to comply with the provisions of the Navigation Rules, International-Inland. Additional information may be found in the Navigation Rules, International-Inland (COMDTINST 16672.B).

D. Improper Use of the Radiotelephone

Improper use of a radiotelephone is a criminal offense. The use of obscene, indecent or profane language during radio communication is punishable by a \$10,000 fine, imprisonment for two years or both.

E. Sound Signals

1. Communication by radiotelephone may be used to request the bridge opening, however, when the contact cannot be initiated or maintained, sound or visual signals as below should be used.
2. Sound signals shall be made by whistle, horn, megaphone, hailer or other devices capable of producing the described signals loud enough to be heard by the bridge operator. "Prolonged blast" means a blast of four to six seconds duration and "short blast" means a blast of approximately one second duration. The sound signal to request the opening of a bridge is one prolonged blast followed by one short blast sounded not more than three seconds after the prolonged blast. For vessels requiring to be passed through a bridge during a scheduled closure period, the sound signal to request the opening of the bridge during that period is five short blasts sounded in rapid succession.

F. Visual Signals

1. When the bridge can be opened immediately, the visual signal to acknowledge a request to open the bridge is one of the following:
 - a. A fixed or flashing white, amber or green light or lights. (This is automatic with the sounding of the horn)
 - b. White flag raised and lowered vertically.

- c. A white, amber or green light raised and lowered vertically.
- 2. When the draw cannot be opened immediately, or is open and must be closed promptly, the visual signal to acknowledge a request to open the bridge is one of the following:
 - a. A red flag or red light swung back and forth horizontally in full sight of the vessel.
 - b. A fixed or flashing red light or lights.
- 3. The acknowledging signal when the bridge cannot open immediately or is open and must be closed promptly shall be repeated until acknowledged in some manner by the requesting vessel. If the vessel does not continue its approach, this can be interpreted by the bridge operator as his acknowledgment as the bridge operator can stop his signal.
- 4. On bridges equipped with marine light signals an appropriate light configuration might be a flashing amber to acknowledge the vessel signal when the bridge can be opened, a flashing green when the bridge is fully open (in addition to the required lift span green lights), and a flashing red light when the draw cannot be opened or must be immediately closed.

VII. GENERAL INSTRUCTIONS

A. Responsibility

- 1. The bridge operator shall not permit persons in the bridge house at any time without prior authorization of the Program Manager or the project manager. Fire hazard inspection authorities, properly identified, may enter the bridge house at any time, to perform their duties. The Program Manager will provide a list of authorized personnel for each bridge. He/she, with prior written approval, may permit others. No personnel may enter the bridge house unless they present their picture identification card. The Contractor is to identify which of his personnel are authorized. A person's presence in the bridge house can be justified only if it is required for the Department or contracted functions or as approved by the Program Manager with the concurrence of the Contractor.
- 2. The bridge operator shall not permit any person to operate the bridge except assigned and properly trained bridge operators or persons in training to become a bridge operator. Such trainees should never be left alone to operate the bridge. Not more than two (2) persons in addition to the bridge operator may be in the bridge house at any given time for the purpose of training except for initial training.
- 3. The bridge operator must remain on duty until relieved by a qualified bridge operator. The bridge operator shall not turn the bridge over to a person in an aberrant state of mind or to a person who is under the influence of drugs or alcohol. Personal safety is of paramount concern to the Department. The bridge operator must employ his own judgment in considering whether or not to abandon the bridge house when he feels his personal safety is in jeopardy. Careful consideration and good judgment is required however, since abandonment of a bridge house is a serious matter to the Department and to the Federal Government. The bridge operator may be called upon to justify his abandonment, and

discipline by the Contractor and prosecution by the State and Federal Government may follow.

4. The bridge operator will maintain a current record or log, on forms approved by the Program Manager, of the following:
 - a. Boat passage and bridge openings
 - b. The results of required inspections
 - c. Malfunction of any equipment or bridge mechanism.
 - d. Any unusual happenings that might be of interest to the Contractor or the Department.
 - e. The bridge operator shall log any and all personnel entering the bridge structure for any reason in form.
 - f. The contractor shall log all training.
5. The bridge operator shall report any failure, disorder or breakage which will, in any way, affect the efficient operation of the bridge, its fender system, safety devices or other appurtenances, to his supervisor immediately. The bridge operator's report should, whenever possible, include full information as to what repairs or replacements can be made without delay.
6. The bridge operator will not go to **sleep** while on duty. Any bridge operator who does not remain alert and watchful at all times may be subject to discipline by the Contractor and prosecution by the State and the Federal Government.
7. The bridge operator shall not engage in private business while on duty.
8. The bridge operator shall not have any unnecessary conversation with boaters.
9. The bridge operator is not permitted to have any appliances or furniture in the bridge house without prior approval from the Program Manager.
10. The bridge operator shall not fish at the bridge or store fishing equipment in the operator house. No one is permitted to fish from the draw span or the bridge fender system or in any way by their presence hinder the operation of the draw bridge. The bridge operator should use reasonable control efforts and prudence to discourage this. The bridge operator shall contact local police for assistance when reasonable control efforts fail.
11. Boats are not permitted to be tied or moored to the bridge fender system. Small craft shall not be allowed to anchor or moor to the bridge. The bridge operator shall contact local police for assistance when reasonable control efforts fail.
12. No pets are allowed in the bridge operator house.
13. It is the responsibility of all bridge operators on duty to check all navigation lights each day. He/she is to make a note in the Bridge Operator's Log as to the results of this check and immediately report to his/her supervisor any malfunctioning lights.
14. When authorized by the Program Manager, the bridge operator may operate the bridge for authorized personnel.

15. The Department's maintenance personnel may request test openings or may operate the bridges.

B. Conduct

1. All bridge operators are required to conduct themselves so as not to reflect discredit to themselves, or the Department while on duty. The public has every right to expect and receive proper courtesy and consideration. Any bridge operator who acts in an improper manner may be disciplined or dismissed by the Contractor.
2. No alcoholic beverages or illegal drugs may be brought into the bridge operator houses. The bridge operator shall not report to work under the influence of alcohol or illegal drugs and shall not consume alcohol or use illegal drugs while on duty. Bridge operators that fail to comply shall be subject to immediate dismissal by the Contractor.
3. The bridge operator shall wear appropriate approved attire for his position.

C. Accident Reports

1. **Vessel Accident Report** - Immediately after a bridge/vessel accident occurs, the bridge operator shall call his supervisor and report the accident and its apparent seriousness. As soon as possible thereafter, the bridge operator shall submit a full report to his supervisor.
2. **Vehicular, Pedestrian or Bicyclist Accident Reports** - Immediately after a bridge/ vehicle / pedestrian/ bicyclist accident occurs, the bridge operator shall call his supervisor and report the accident and its apparent seriousness. As soon as possible thereafter, the bridge operator shall submit a full report to his supervisor as appropriate.
3. The bridge operator shall not discuss details of any accident, vessel or vehicular, with anyone other than the Contractor, officials of the Department, law enforcement officers or properly identified representatives of the Department's insurance company.

D. Emergencies

1. In case of emergencies, such as power failures, or the bridge being damaged to such an extent that it cannot be safely operated, the bridge operator shall immediately call his supervisor.
2. Bridge operators are not to comply with any request to raise the bridge they are operating for the purpose of forming a roadblock. Any such request should be referred to his supervisor.

E. Encroachment

The bridge operator will promptly report to his supervisor any trespass on the Department's right-of-way within the vicinity of the bridge for activities, such as: erection of buildings, cutting timber, removing sand or other material, digging ditches, using the banks of the waterway as loading points where the use is clearly of commercial nature.

F. Safety

1. The bridge operator is expected to conduct himself in a manner that is safe for himself, others and property. The Contractor and the bridge operator are responsible to comply with Federal Occupational Safety and

Health Act (OSHA) rules and Michigan Occupational Safety Rules (MIOSHA).

2. Life jacket must be worn any time the bridge operator or other contract personnel are in an area where they are exposed to falling in the water and as defined by OSHA and MIOSHA. Life jackets shall be securely fastened when they are being worn.
3. Any water standing around electrical switchgear will be mopped dry and a rubber floor mat put in place before electrical gear is operated.
4. First aid kits are for emergency use only and shall be refilled after use by the contractor.

G. Lighting

1. Each bridge operator on duty during hours of darkness shall check the street lights and navigation lights at the beginning of his/her shift or as soon as it becomes dark and regularly throughout the hours of darkness. A record of the results of these inspections shall be entered in the Bridge Operator's Log.
2. Battery - operated lights shall be kept in readiness at all times and must be placed in their proper place for use when electrical power fails.

VIII. BRIDGE MAINTENANCE

- A. If the main electric circuit at the bridge goes off, the operator will contact the Program Manager for instructions.
- B. The bridge operator is responsible to inform the Project Manager upon a mechanical malfunction or of any event that may have jeopardized the structural integrity of the bridges.
- C. The bridge operator is to cooperate fully with Department personnel with the personal safety of himself and all members of the Department of utmost priority. Good clear communication is vital while Department personnel are on the site.
- D. If any member of the Department or anyone else is in the machinery section of the bridge, notification of a bridge span movement is absolutely necessary. The machinery room is located in front of the counterweight for the bridges and moves as the bridge goes up or down. If available, two way radios will be used for this purpose. If radios are not available, any other means of communication agreed upon at the site may be employed.
- E. If the bridge operator has any doubts as to whether the communication is fully understood, he should not proceed with any movement of the bridge span.
- F. Maintenance personnel may give the bridge operator instructions that seem counter to the instructions given in this manual. The bridge operator is to comply with the crew leader's instructions and make a note in his Bridge Maintenance Log to that effect. If the bridge operator cannot comply with the maintenance personnel's instructions, he is to call the Project Manager immediately for assistance.

IX. INSTRUCTIONS AND GUIDES FOR COMPLETE FORMS

- A. All entries are to be printed or typed in vertical lettering in capital letters, no script.
- B. Days of the week, if abbreviated, shall be MON, TUES, WED, THUR, FRI, SAT, AND SUN.

- C. Months, if abbreviated shall be the standard three letter abbreviation.
- D. Numbers shall be shown in Arabic numerals, i.e.: 1, 2, 3, 4, 5, 6, 7, 8, 9 and 0.
- E. Never use ditto marks.
- F. Enter "PM" or "AM" clearly as required.
- G. When showing direction indicate the direction the vessel or vehicle is going.
- H. Weather indications are to be shown as follows:
 - 1. "W" for windy
 - 2. "C" for calm
 - 3. "R" for rain
 - 4. "S" for sunny
 - 5. "F" for foggy
 - 6. "NW" for no wind
 - 7. "CH" for choppy
 - 8. "RT" for torrential rain
 - 9. "PS" for partly sunny
 - 10. "VF" for very foggy
 - 11. "HW" for high wind
 - 12. "CHB" for very rough choppy
 - 13. "NS" for no sun
- I. When signing in or out for duty, the bridge operator is to sign his/her name on the required form, showing day of the week, date and time of sign in.
- J. Vessels shall be identified on by:
 - 1. Pleasure
 - 2. Commercial
 - 3. Tug-With-Tow
 - 4. Government

X. MISCELLANEOUS REQUIREMENTS

- A. Contractor agrees to employ only qualified people who are skilled in the performance of work specified herein. Should the Department's Program Manager or Designated Representative find any person(s) on the contract incompetent, unfit or otherwise objectionable for his/her duties and so certify the facts to the Contractor, the Contractor shall immediately cause the employee to be removed from the Contract and shall not be reemployed on the Contract without written consent of the Department's Program Manager or Designated Representative.
- B. The Contractor's employees shall wear approved attire and carry picture identification tags at all times while on Department property.

Attachment A-VII- Operating Manual
SEE ATTACHED DOCUMENTS

Fort St Bridge
Bicentennial Bridge
Blossomland Bridge

ATTACHMENT A-VIII
INSTRUCTIONS FOR TRAFFIC CONTROL GATE MALFUNCTIONS

A. GATE REMAINS UPRIGHT (OPEN)

1. Request flagmen assistance from the Project Manager and/or crank the gate down by hand.
2. Block traffic using barricades or cones prior to opening the spans.
3. Refer to ATTACHMENT A-VII "Panatrol Operating Manual for the Fort St. Bascule Bridge", Bypasses (page 7 to 9).
4. Open bridge.
5. Close bridge.
6. Remove cones or barricades.
7. Refer to ATTACHMENT A-VII "Panatrol Operating Manual for the Fort St. Bascule Bridge", Bypasses (page 7 of 9).
8. Complete Bridge Malfunction Report.

B. GATE REMAINS DOWN (CLOSED)

1. If the gate will not return to the upright position, the Bridge Operator will attempt to crank up the gate by hand.
2. Notify the Project Manager of the malfunction.
3. Refer to ATTACHMENT A-VII "Panatrol Operating Manual for the Fort St. Bascule Bridge", Bypasses (page 7 of 9).
4. Complete the Bridge Malfunction Report.

C. "ALL GATES CLOSED" WITHOUT "ALL GATES CLOSED" LIGHT

1. Refer to ATTACHMENT A-VII "Panatrol Operating Manual for the Fort St. Bascule Bridge", Bypasses (page 6 of 9).
2. Notify the Project Manager of the malfunction.
3. Complete the Bridge Malfunction Report.

D. GATE IS DAMAGED BY TRAFFIC OR STORM

1. If by traffic, attempt to obtain driver and vehicle identification and license plate number.
2. Notify the Project Manager immediately.
3. Notify the local police.
4. Use Section A instructions-GATE REMAINS UPRIGHT (OPEN) when bridge needs to be opened with damaged gate.
5. Complete Vehicle Traffic Accident Report.
6. Complete Bridge Malfunction Report.

In all cases listed above, the Project Manager will notify the Contract Administrator, who will notify Maintenance for repair. Failure to perform any of the above procedures or complete the appropriate paperwork will be considered non-conformance of the Bridge Contract.

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

Contract No. 591B6600379

Lift Bridge Operational & Custodial Services

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and Miller Concrete and Construction ("Contractor")

The Fort Street Bridge Contract is effective approximately August 1, 2016 ("Effective Date"), and unless terminated, expires on July 31, 2018

The Bicentennial Bridge and Blossomland Bridge Contract is effective approximately March 1, 2017("Effective Date"), and unless terminated, expires on February 28, 2019.

The Contracts may be renewed for up 2 additional 1 year period(s). Renewal must be by written agreement of the parties. And will automatically extend the Term of this Contract.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in Exhibit A – Statement of Work (the "Contract Activities"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Laura Dotson	Casey Miller
MDOT Purchasing	Miller Concrete & Construction

425 W. Ottawa Lansing, MI 48933 Dotsonl2@michigan.gov (517) 373-2134	6870 W. Kelly Rd. Lake City, MI 49651 Caseymiller33@yahoo.com 231-510-5093
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "Contract Administrator"):

State:	Contractor:
Laura Dotson MDOT Purchasing 425 W. Ottawa Lansing, MI 48933 Dotsonl2@michigan.gov (517) 373-2134	Casey Miller Miller Concrete & Construction 6870 W. Kelly Rd. Lake City, MI 49651 Caseymiller33@yahoo.com 231-510-5093

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State:	Contractor:
Jasna Cehaja Fort St Bascule Bridge Program Manager 6510 Telegraph Rd Taylor, MI 48180 cehajaj@michigan.gov (313) 375-2444 (office) (313) 573-0744 (cell) And Lisa Marsh-McCarty Southwest Region Program Manager 1501 East Kilgore Road Kalamazoo, MI 49001 MarshMcCartyL@michigan.gov (269) 569-0653 (cell) (269) 337-3939 (office)	Casey Miller Miller Concrete & Construction 6870 W. Kelly Rd. Lake City, MI 49651 Caseymiller33@yahoo.com 231-510-5093

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Property Insurance	
Property Insurance covering any loss or damage to the State-owned property used by Contractor for any reason under this Contract, and the State-owned equipment, software and other contents of the property, including without limitation, those contents used by Contractor to provide the Services to the	The State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents must be endorsed on the policy as a loss payee as its interests appear.

State, up to its replacement value, where the property and its contents are under the care, custody and control of Contractor.	
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If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. Reserved

8. Reserved.

9. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

14. Change of Control. Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

10. Acceptance. Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

11. Delivery. Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.

12. Reserved. .

13. Warranty Period. The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.

- 14. Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

- 15. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
- 16. Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 17. Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

18. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 19, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

19. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

20. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 21. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 22. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 23. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
- 24. State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
- 25. Reserved**
- 26. Reserved.**
- 27. Reserved.**
- 28. Reserved.**
- 29. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 30. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 17, Termination for Cause.
- 31. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 32. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 33. Reserved.**
- 34. Reserved.**
- 35. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 36. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 37. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 38. Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

39. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

40. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

41. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

42. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

43. Order of Precedence. In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.

44. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

45. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.

46. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

47. Entire Contract and Modification. This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice").